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s/ Jan Hostasa
Jan Hostasa

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application :
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QINGYU ZENG ET AL. :
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Ser. No. 09/474,536 : Examiner: Torres Velazquez, N.
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Filed: December 29, 1999 : Group Art Unit: 1771
:
For: ACOUSTICAL FIBROUS INSULATION PRODUCT FOR USE IN A VEHICLE

RESPONSE

Commissioner of Patents
and Trademarks
Washington, DC 20231

Sir:

The Applicants have carefully reviewed the Office Action of October 1, 2001, and in response traverse the rejection of the claims without making any amendments.

Claim 1 very clearly patentably distinguishes over U.S. Patent 4,946,738 to Chenoweth et al. Specifically, the standard for lack of novelty or "anticipation" under 35 U.S.C. §102 is one of strict identity. As stated by the Court of Appeals for the Federal Circuit in *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986), ". . .it is axiomatic that for prior art to anticipate under Section 102 it has to meet every element of the claimed invention. . . ." In *In re Donahue*, 226 USPQ 619, 621 (Fed. Cir. 1985), it was stated that "An anticipation rejection requires a showing that each limitation of the claim must be found in a single reference, practice, or device." As further stated by the Court of Appeals for the Federal Circuit in *Atlas Powder Co. v. E.I. DuPont deNemours and Co.*, 224 USPQ 409, 411 (Fed. Cir. 1984), the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that

reference."

The Chenoweth et al. '738 patent discloses a non-woven fibrous product that can be used as insulation such as for a motor vehicle headliner. The product consists of a matrix of glass fibers and synthetic fibers that may include a scrim, additional fabric or cosmetic covering applied to one or both surfaces. The Chenoweth et al. '738 patent, however, fails to disclose a product incorporating any form of perimeter flange as set forth in claim 1 and, accordingly, under the line of cases cited above the Chenoweth et al. '738 patent fails to provide an appropriate basis for the rejection of claim 1 under 35 U.S.C. §102. As such, Applicant submits the rejection is improper and should be withdrawn.

Similarly, Applicant submits claims 2-4, 6, 7 and 9-11 which depend from claim 1 are allowable for the same reasons. Further, each of these claims also provides additional limitations that supplement the basis for their allowability. For example, claim 4 provides that the flange is of a thickness less than about 15% of the thickness of the blanket. Since the Chenoweth et al. '738 patent fails to disclose a product incorporating a form of flange, it cannot disclose the detailed limitation expressed in this claim.

Claim 6 provides that the facing material is a scrim web and a film where the film is heat softened to adhere the film and scrim to the blanket of polymer fibers. The Chenoweth et al. '738 patent discloses the possibility of applying a scrim or film to one or both surfaces of the product but it should be appreciated that the reference including, for example, column 7 line 28 to column 8 line 2, the concept of providing a facing material comprising a combination of a scrim web and a film is not disclosed in this reference.

Claim 7, which depends from claim 6, further describes the scrim as being made of polyester fibers and the film as being a polypropylene adhesive film. As noted above with respect to claim 6, such a combined facing material is neither taught nor suggested in the Chenoweth et al. '738 patent and, accordingly, the detailed structure set forth in claim 7 is not shown or described in the reference.

Independent claim 12 reads upon a truck hood acoustical insulation product that like independent claim 1 refers to a perimeter flange. As noted above the Chenoweth et al. '738 patent fails to teach or suggest a product incorporating such a flange as claimed. Accordingly, applicant submits that this specifically claimed element is not disclosed in the prior art reference and under the case law noted above the rejection under 35 U.S.C. §102 should be withdrawn.

Claim 13 which depends from claim 12 and is rejected on the same grounds is equally allowable for the same reasons. Additionally, claim 13 provides that the flange

has a thickness less than about 15% of the thickness of the blanket. Since the Chenoweth et al. '738 patent fails to disclose a product incorporating a form of flange, Applicants submit this reference cannot teach or suggest the details of the structure set forth in this claim and claim 13 too should be found to distinguish over the cited art in question.

Applicant submits that claims 1-20 also patentably distinguish over the Chenoweth '738 patent even when it is considered in combination with U.S. Patent 5,773,375 to Swan et al. As noted when discussing the Chenoweth et al. '738 patent there is no teaching or suggestion in this reference relating to the provision of a product with a perimeter flange made by pressing the facing material and an edge portion of the blanket together or by any other means. The Examiner notes that the Chenoweth et al. '738 patent does not disclose any form of perimeter flange but then argues that it is reasonable to presume that the claimed flange is inherent since the reference uses the same starting materials and like processes for the production of a similar end product.

In accordance with 35 U.S.C. §112, the specification of a patent application ". . . shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most clearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor for carrying out his invention." In the Chenoweth et al. '738 patent the applicants describe in great detail the production of a non-woven fibrous product and emphasize the "improved product strength, stiffness and shape retentivity of the resulting product (note, for example, column 8 lines 11-38). At column 3 lines 49-56 and 61-66 the Chenoweth et al. '738 patent clearly states objectives of providing a product with "sufficient strength to the matrix to permit handling and further processing" and "good strength and rigidity which facilitates modular assembly of automotive headliners and similar products".

When one considers these sections of the Chenoweth et al. '738 patent, one cannot deny that a major focus and intent of the inventors was to produce a stronger product with better rigidity and handling characteristics. Despite this there is no disclosure in the Chenoweth et al. '738 patent of the concept of providing any form of perimeter flange in order to increase strength or rigidity. When the failure to disclose this concept is considered in light of the objectives of the Chenoweth et al. '738 patent and the requirements of disclosure in the patent statutes set forth in 35 U.S.C. §112, Applicant submits that the claimed flange is not inherent to the invention disclosed in the Chenoweth et al '738 patent. A perimeter flange is, in fact, a structure which the Chenoweth et al. inventors apparently failed to consider or provide.

While the secondary reference to Swan et al. does disclose an acoustical insulator formed with a perimeter flange or reduced thickness area 17, it must not be overlooked that the Swan et al. reference explicitly relates to a product having a web of melt-blown polypropylene rather than a web or blanket as disclosed in the Chenoweth et al. patent consisting of glass fibers and synthetic bicomponent fibers. Since the Chenoweth et al. patent clearly teaches a product of sufficiently improved strength and rigidity for use as a headliner in accordance with its objectives, there does not appear to be any motivation in either of these references to lead one skilled in the art to add a perimeter flange to the product disclosed in the Chenoweth et al. '738 patent. Nothing is to be gained. Stated another way, neither the Chenoweth et al. '738 reference nor the Swan et al. '375 reference teach or suggest any added benefit to be achieved by the proposed combination (i.e. the adding of a perimeter flange to the Chenoweth et al. product) and, accordingly, the rejection under 35 USC § 103 of claim 1 is improper. Applicant submits that this result is supported by *In re Laskowski*, 10 USPQ2d 1397 (Fed. Cir. 1989) wherein it is stated ". . . the mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification."

Claims 2-11 which depend from claim 1 and are rejected on the same grounds are equally allowable for the same reasons as claim 1. Further, these claims provide additional limitations that provide still further support for their allowability. For example, claim 6 provides that the facing material is a scrim web and a film and claim 7 provides that the scrim is made of polyester fibers and the film is a polypropylene adhesive film. Neither of the cited references, whether considered singularly or in combination, disclose a facing material that is a combination of a scrim web and a film. As such, there can be no doubt that claims 6 and 7 also patentably distinguish over this cited art and should be allowed.

Independent claim 12 reads upon a truck hood acoustical insulation product which, like the acoustical insulation product of claim 1, includes a perimeter flange made by pressing the facing material and an edge portion of the blanket together. Accordingly, it should be appreciated that claim 12 includes the same structural limitations of claim 1 which distinguish claim 1 from the cited prior art. As such, claim 12 should also be allowed.

Claims 13-20 depend from claim 12 and these claims should also be allowed for the same reasons. Of course, as with dependent claims 2-11, these dependent claims also include further support and basis for their allowance. For example, claims 16 and 17 provide that the facing material is a combination scrim web and film where the scrim is

made of polyester fibers and the film is a polypropylene adhesive film. As noted above, neither of the references cited by the Examiner disclose any form of combined facing material comprising a scrim web and film of any type. As such, Applicant submits that claims 16 and 17 patentably distinguish over the art and should be allowed.

Finally, claims 1, 2 and 12 very clearly patentably distinguish over U.S. Patent 5,459,291 to Haines et al. even when it is considered in combination with the Swan et al. '375 patent.

The Haines et al. patent discloses a sound absorption laminate including a blanket of glass or polymeric fibers and a facing sheet. As acknowledged by the Examiner, the Haines et al. patent does not disclose an acoustical insulation product including any form of perimeter flange made by pressing the facing material and an edge portion of the blanket together or by any other means. Recognizing this shortcoming of the primary reference to Haines et al., the Examiner relies upon the Swan et al. '375 reference. As noted above, the Swan et al. reference discloses acoustical insulation having a perimeter flange or reduced thickness area 17. The Swan et al. patent, however, only discloses that it is desirable to provide such a flange on an insulation product explicitly made from melt-blown polypropylene microfibers. The Swan et al. patent provides no teaching to lead one skilled in the art to apply such a flange to a laminate material including glass fibers such as provided in the Haines et al. patent. Accordingly, the proposed combination of references fails to provide any basis for the rejection of claim 1 or claim 2 dependent thereon.

This is also true of independent claim 12 which like independent claim 1 references "a perimeter flange made by pressing the facing material and an edge portion of the blanket together. . . ." Thus, claims 1, 2 and 12 all patentably distinguish over the proposed combination of the Haines et al. '291 patent and the Swan et al. '375 patent.

In summary, all the pending claims patentably distinguish over the prior art and should be formally allowed. This includes all of the cited references and not just those specifically applied by the Examiner. Upon careful review and consideration it is believed the Examiner will agree with this proposition. Accordingly, the early issuance of a formal Notice of Allowance is earnestly solicited. If any fees are required pertaining to this response, Applicant requests that they be charged to Deposit Account No. 50-0568.

Respectfully submitted,

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